

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 72 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

NORMA DETERGENT PVT. LTD.

Appearance:

MR MIHIR JOSHI for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

Date of decision: 22/12/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The applicant has proposed the following question
in paragraph 4 of the application for being disposed of
by us under Section 256(2) of the Act:-

"Whether, the Appellate Tribunal is right in law

and on facts in allowing the claim of the assessee under Section 80-HH of the Act?"

Earlier, the applicant had moved the Appellate Tribunal under Section 256(1) for referring this question to us, but the Tribunal holding that, the production even if on trial basis, was covered under the provisions of Section 80HH of the Act, rejected the application. The Revenue has placed reliance on the decision of the Supreme Court in Janata Machine Tools Vs. Uttar Pradesh - 1989 Supplement (1) S.C.C 281 in support of the contention that the production has to be a commercial production and not on trial basis. The Supreme Court's said decision was given of course in context of the explanation (ii) to Section 4-A of the U.P. Sales Tax Act, 1948, which defined "date of starting production". However, a question of law does arise in context of Section 80HH(2)(i) as to whether the expression "begin or begun to manufacture or produce articles" would include manufacture or production of articles on trial basis. We therefore, direct the Tribunal to furnish statement of case in respect of the aforesaid question under Section 256(2) of the Act. Rule is made absolute accordingly with no order as to costs.

*/Mohandas